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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 171 of 2014

- Andreh Tigga S/o Bilim Tigga; aged about 50 years; R/o- Kagal Nagar, R.D. No.-03, Mishra Bhawan, Sonari, Jamashedpur, Jharkhand; at Post- Vishrampur; Police Station- Ranka; District- Garhawa (Jharkhand)

  (owner of the Truck No. J.H. 14 A. 3737)

---- Appellant

Versus

1. Usha Devi W/o Late Damodar Prasad; aged about-42 years;
2. Rakesh Prasad S/o Late Damodar Prasad; aged about 21 years;
3. Ranjit Prasad S/o Late Damodar Prasad; aged about- 16 year;
4. Rikesh Prasad S/o Late Damodar Prasad; aged about- 16 years;
5. Kumari Sweta D/o Late Damodar Prasad; aged about- 12 years;
6. Sumitra Devi W/o Late Kanhai saw; aged about- 60 years; Respondent No. 03 to 05 minor through the mother (natural guardian) Usha Devi; All R/o Village- Bhauri; Police Station- Ranka; District- Garhawa (Jharkhand). At Shankarghat, Sargawan, ambikapur; Police Station, Tahsil- Ambikapur; District (Revenue & Civil)- Surguja (C.G.).
7. Branch Manager; The New India Insurance Company Ltd. Sada Complex, Transport Nagar Korba; Police Station, Tahsil & District (Revenue & Civil)- Korba (C.G.);

   (Insurer of the Truck No. J.H. 14 A. 3737).

---- Respondents

For Appellant	:Shri Aanand Kesherwani, Advocate.
For Respondent Nos. 1 to 6	: None.
For Respondent No.7	:Shri Deepak Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J
Judgment On Board

15/04/2019:

This appeal is filed by the owner of the offending vehicle under

Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) challenging the award dated 25.11.2013, passed by Additional Motor Accident Claims Tribunal (FTC), Ambikapur Distt.- Sarguja in Claim Case No.145/2013, awarding compensation of Rs.3,90,000/- in favour of claimants/respondent Nos. 1 to 6 with interest @ 6% per annum from the date of application till realization, fastening liability on the appellant/non-applicant No.1/owner while exonerating respondent No. 7/non-applicant No.2/insurance company from its liability to pay compensation to the claimants.

02. As per averments in the claim petition,18.11.2011 Damodar Prasad (since deceased) was driving the offending vehicle bearing registration No. JH14A/3737 near the village Gahadharpur Jamtola ulta pani amroad turning, he fell down from the truck and came under the wheel of the truck, due to which he sustained multiple & grievous injuries and died.

03. On claim petition being filed by the claimants, wife, children & mother of the deceased, under Section 163-A of the Act claiming compensation to the tune of Rs.6,05,500/-, the Tribunal considering the evidence led by the parties, by the impugned award granted compensation as mentioned para one of this judgment.

04. Learned counsel for the appellant/owner submits that the liability fastened upon the owner only on the ground that as per insurance policy, risk is covered for the third party therefore, learned Tribunal has wrongly exonerated the Insurance Company from its liability to pay compensation to the claimants.

05. On the other hand, learned counsel for the insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter and the evidence adduced by the parties, has rightly exonerated the insurance company and fastened liability on the owner/appellant He also submits that in this case no PA is cover for the driver of the offending vehicle. As per policy no any premium was taken for the driver or owner the offending vehicle. Therefore, there is no need to interfere in the award impugned. He also submits that at the time of accident the driver of the offending vehicle did not have a valid and effective driving licence to drive the offending vehicle, therefore, there is breach of policy condition.

06. Heard learned counsel for the parties and perused the material available on record including the impugned award.

07. It has not been disputed by the parties that the offending vehicle was insured with the Non-applicant No. 2/Insurance Company, policy papers was produced before the Tribunal but the policy papers was neither proved nor exhibited by the owner of the offending vehicle before the learned Tribunal. As per policy produced before the Tribunal the premium was not taken towards risk cover of driver, conductor & cleaner or any other employee only the risk is covered for the third party, and the deceased was the third party, consequently under the policy, the risk is not covered for the deceased. The driving licence of the driver of the offending vehicle was also not produced before the tribunal.

08. Thus, considering the facts and circumstances of the case, the

fact that on the date of accident, the driver was not having a valid licence for driving the HTV, the offending vehicle therefore in these circumstances, this Court is of the opinion that the Tribunal was fully justified in exonerating the insurance company on the ground of breach of policy conditions & on the ground of no premium taken with regard to risk cover for the driver & owner of the offending vehicle and fastening the liability on the owner/appellant.

09. In the result, the appeal is dismissed. The non-applicant No.1/owner is liable to pay compensation as awarded by the Tribunal to the claimants.

Sd/-

(Gautam Chourdiya)
Judge

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